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Recording Requested by:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

After Recording return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT  
REGULATORY AGREEMENT FOR MULTIFAMILY PROJECTS**

**UNDER SECTIONS 207, 220, 221(d)(3), 221(d)(4), 223(a)(7), 223(f) and 231 OF THE  
NATIONAL HOUSING ACT, AS AMENDED**

**Replaces form HUD- 92465, 92466, FHA-1730, and 1733**

**HUD Project No.:** \_\_\_\_\_ **Elderly** \_\_\_\_ **Non-Elderly** \_\_\_\_

**Lender:** \_\_\_\_\_ **Processed under:**    ☐ JMAP    ☐ JTAP

**Original Principal Amount of Multifamily Note:** \_\_\_\_\_ **Date of Note:** \_\_\_\_\_

**Originally endorsed for insurance under Section** \_\_\_\_\_.

**Security Instrument Recorded:**        **State**                **County**                **Date**

**Book/Volume**                **Page**                **Instrument/Document Number**

**Borrower:** Profit-Motivated \_\_\_\_ Limited Dividend \_\_\_\_ Public Body \_\_\_\_ Non-Profit \_\_\_\_  
(Failure to check the appropriate space shall not affect the enforceability or application of this Agreement.)

This Agreement is entered into this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, between  
\_\_\_\_\_, a \_\_\_\_\_ organized

and existing under the laws of \_\_\_\_\_, whose address is \_\_\_\_\_, its successors, heirs, and assigns (jointly and severally) (Borrower) and the Secretary of Housing and Urban Development, his or her successors, assigns or designates (HUD).

In consideration of, and in exchange for an action by HUD, HUD and the Borrower agree to the terms of this Agreement. The HUD action may be one of the following: the endorsement for insurance by HUD of the Note, the consent of HUD to the transfer of the Mortgaged Property, the sale and conveyance of the Mortgaged Property by HUD, or the consent of HUD for other actions related to the Borrower or to the Mortgaged Property.

Further, the Borrower and HUD execute this Agreement in order to comply with the requirements of the National Housing Act, any related legislation, regulations, and administrative requirements adopted by HUD. This Agreement shall continue during such period of time as HUD shall be the owner, holder, or insurer of the Note, or is obligated to protect rights of tenants of the Mortgaged Property.

Violation of this Agreement or of the regulations and Directives of HUD may subject the Borrower and related parties to adverse actions. Refer to Article VII below.

**AGREEMENTS:** The Borrower and HUD covenant and agree as follows:

## **I. DEFINITIONS**

1. **DEFINITIONS.** The following terms, when used in this Agreement (including when used in the above recitals), shall have the following meanings, whether capitalized or not and whether singular or plural, unless, in the context, an incongruity results:

a. **"Affiliate"** Persons and entities are affiliates of each other if, directly or indirectly, either one controls or has the power to control the other, or, a third person controls or has the power to control both. Indicia of control include, but are not limited to: interlocking management or ownership, identity of interests among family members, shared facilities and equipment, common use of employees, or a business entity organized following the suspension or debarment of a person or entity which has the same or similar management, ownership, or principal employees as the suspended, debarred, ineligible, or voluntarily excluded person or entity.

b. **"Borrower"** means all persons or entities identified as "Borrower" in the first paragraph of the Security Instrument, together with any successors and assignees. Borrower shall include any person or entity taking title to the Mortgaged Property whether or not such person or entity assumes the Note. Whenever the term "Borrower" is used herein, the same shall be deemed to include the Obligor of the debt secured by

the Security Instrument and shall also be deemed to be the Mortgagor as defined by the National Housing Act, as amended, implementing regulations and Directives.

c. **“Displaced Persons or Families”** means a family or families, or a person, displaced from an urban renewal area, or as a result of government action, or as a result of a major disaster determined by the President pursuant to the Disaster Relief and Emergency Assistance Act.

d. **“Directives (of HUD)”** includes written guidance issued by HUD, at the time of origination and subsequently, relating to HUD’s multifamily insurance programs under the National Housing Act, as amended, and any successive legislation. Directives include handbooks, guidebooks, Notices, Mortgagee Letters and other written directives issued by HUD whether or not published in the Federal Register.

e. **“Distribution”** means any disbursement, conveyance or transfer of cash, any asset of the Borrower, or any portion of the Mortgaged Property, including the segregation of cash or assets for subsequent withdrawal as Surplus Cash, other than in payment of expenses that are determined by HUD to be reasonable and necessary.

f. **“Elderly project or Elderly portion of project”** means a Project or portion of a Project which is designed for occupancy by persons, married or single, who are 62 years of age or older.

g. **“Fixtures”** means all property which is so attached to the Land or the Improvements as to constitute a fixture under applicable law, whether acquired now or in the future, including: machinery, equipment, engines, boilers, incinerators, installed building materials; systems and equipment for the purpose of supplying or distributing heating, cooling, electricity, gas, water, air, or light; antennas, cable, wiring and conduits used in connection with radio, television, computers, security, fire prevention, or fire detection or otherwise used to carry electronic signals; telephone systems and equipment; elevators and related machinery and equipment; fire detection, prevention and extinguishing systems and apparatus; security and access control systems and apparatus; plumbing systems; water heaters, ranges, stoves, microwave ovens, refrigerators, dishwashers, garbage disposals, washers, dryers and other appliances; light fixtures, awnings, storm windows and storm doors; pictures, screens, blinds, shades, curtains and curtain rods; mirrors; cabinets, paneling, rugs and floor and wall coverings; fences, trees and plants; swimming pools; playground and exercise equipment and classroom furnishings and equipment.

h. **“HUD”** means the United States Department of Housing and Urban Development acting by and through the Secretary in the capacity as insurer or holder of the loan secured by the Security Instrument under the authority of the National Housing Act, as amended, the Department of Housing and Urban Development Act, as amended, or any other federal law or regulation pertaining to the loan (as evidenced by the Note) or the Mortgaged Property.

- i. **"Impositions"** and **"Imposition Deposits"** are defined in the Security Instrument.
- j. **"Improvements"** means the buildings, structures, and alterations now constructed or at any time in the future constructed or placed upon the Land, including any future replacements and additions.
- k. **"Indebtedness"** means the principal of, interest on, and all other amounts due at any time under the Note or the Security Instrument, including prepayment premiums, late charges, default interest, and advances to protect the security as provided in the Security Instrument.
- l. **"Land"** means the estate in realty described in Exhibit A.
- m. **"Leases"** means all present and future leases, subleases, licenses, concessions or grants or other possessory interests now or hereafter in force, whether oral or written, covering or affecting the Mortgaged Property, or any portion of the Mortgaged Property (including proprietary leases, non-residential leases or occupancy agreements if Borrower is a cooperative housing corporation), and all modifications, extensions or renewals.
- n. **"Lender"** means the entity identified as "Lender" in the first paragraph of the Security Instrument, or any subsequent holder of the Note, and whenever the term "Lender" is used herein, the same shall be deemed to include the Obligee, or the Trustee(s) and the Beneficiary of the Security Instrument and shall also be deemed to be the Mortgagee as defined by the National Housing Act, as amended, implementing regulations and Directives.
- o. **"Limited Dividend Borrower"** means a limited dividend corporation or other limited dividend entity which is restricted by Federal or State law or by HUD as to rate of return and other aspects of its operation.
- p. **"Mortgaged Property"** means all of the Borrower's present and future right, title and interest in and to all of the following:
  - (1) the Land;
  - (2) the Improvements;
  - (3) the Fixtures;
  - (4) the Personalty;
  - (5) all current and future rights, including air rights, development rights, zoning rights and other similar rights or interests, easements, tenements, rights-of-way, strips and

gores of land, streets, alleys, roads, sewer rights, waters, watercourses, and appurtenances related to or benefiting the Land or the Improvements, or both, and all rights-of-way, streets, alleys and roads which may have been or may in the future be vacated;

(6) all proceeds paid or to be paid by any insurer of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, whether or not Borrower obtained the insurance pursuant to Lender's requirement;

(7) all awards, payments and other compensation made or to be made by any municipal, State or Federal authority with respect to the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property, including any awards or settlements resulting from condemnation proceedings or the total or partial taking of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property under the power of eminent domain or otherwise and including any conveyance in lieu thereof;

(8) all contracts, options and other agreements for the sale of the Land, the Improvements, the Fixtures, the Personalty or any other part of the Mortgaged Property entered into by Borrower now or in the future, including cash or securities deposited to secure performance by parties of their obligations;

(9) all proceeds from the conversion, voluntary or involuntary, of any of the above into cash or liquidated claims, and the right to collect such proceeds;

(10) all Rents and Leases;

(11) all earnings, royalties, instruments, accounts, accounts receivable, supporting obligations, issues and profits from the Land, the Improvements or any other part of the Mortgaged Property, and all undisbursed proceeds of the loan secured by the Security Instrument and, if Borrower is a cooperative housing corporation, maintenance charges or assessments payable by shareholders or residents;

(12) all Imposition Deposits;

(13) all refunds or rebates of Impositions by any municipal, State or Federal authority or insurance company (other than refunds applicable to periods before the real property tax year in which the Security Instrument is dated);

(14) all tenant security deposits which have not been forfeited by any tenant under any Lease; and

(15) all names under or by which any of the above Mortgaged Property may be operated or known, and all trademarks, trade names, and goodwill relating to any of the Mortgaged Property.

q. **"Non-Profit Borrower"** means a Borrower which is a corporation or association organized for purposes other than profit or gain for itself or persons identified therewith and which HUD finds is in no way controlled by or under the direction of persons or firms seeking to derive profit or gain therefrom. Minimally, the entity may not make Distributions to any individual member or shareholder.

r. **"Note"** means the Multifamily/Health Care Facility Note described in the Security Instrument, including all schedules, riders, allonges and addenda, as such Multifamily/Health Care Facility Note may be amended from time to time.

s. **"Personalty"** means all furniture, furnishings, equipment, machinery, building materials, appliances, goods, supplies, tools, books, records (whether in written or electronic form), computer equipment (hardware and software) and other tangible or electronically stored personal property (other than Fixtures) which are owned or leased by the Borrower now or in the future in connection with the ownership, management or operation of the Land or the Improvements or are located on the Land or in the Improvements, and any operating agreements relating to the Land or the Improvements, and any surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, choses in action and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

t. **"Principals"** are the following legal and natural persons having ownership interests in the Borrower: natural persons who are sole owners, joint venturers, joint tenants, tenants by the entirety, trustees or beneficiaries of trusts, and all general partners; in the case of limited partnerships, limited partners having a twenty-five (25%) percent or more interest in the partnership; in the case of public or private corporations or governmental entities, the president, vice president, secretary, treasurer, and all other executive officers who are directly responsible to the board of directors, or any equivalent governing body, as well as all directors and each stockholder having a ten (10%) percent or more interest in the corporation; in the case of a Limited Liability Company (LLC) or a Limited Liability Partnership (LLP), all managing members or partners, all managers, and all members or partners with a ten (10%) percent or greater governance interest or a twenty-five (25%) percent or greater financial interest.

u. **"Project"** means the Mortgaged Property and all other assets of whatever nature or wherever located, used in, owned by or leased by the Borrower in conducting the business on the Mortgaged Property, which business is providing housing facilities and other related activities.

v. **"Property Jurisdiction"** is (are) the jurisdiction(s) in which the Land is located.

w. **"Public Body Borrower"** means a Federal instrumentality, a State or political subdivision thereof, or an instrumentality of a State or a political subdivision thereof, which certifies that it is not receiving financial assistance from the United States exclusively pursuant to the United States Housing Act of 1937 (with the exception of projects assisted or to be assisted pursuant to Section 8 of such Act) and which is acceptable to HUD.

x. **"Reasonable operating expenses"** means an expense which arises from the everyday operation and maintenance of the Project and which primarily benefits the Project as opposed to the Borrower.

y. **"Rents"** means all rents (whether from residential or non-residential space), revenues, issues, profits, (including carrying charges, maintenance fees, and other cooperative revenues) and other income of the Land or the Improvements, including all revenues, gross receipts and all pledges, gifts, grants, bequests, contributions and endowments, parking fees, laundry and vending machine income and fees and charges for food and other services provided at the Mortgaged Property, whether now due, past due, or to become due, and deposits forfeited by tenants.

z. **"Residual Receipts"** is a term which applies to certain funds held by Non-Profit, Public Body and Limited Dividend Borrowers whose Notes are insured or held by HUD pursuant to Section 220, Section 221(d)(3) and 231 of the National Housing Act. Residual Receipts are calculated by determining an amount of Surplus Cash (defined below).

After the calculation of Surplus Cash, as described below, the Borrower may make any Distributions permitted by this Agreement, HUD regulations and Directives. "Residual Receipts" will be the restrictive cash held by Section 220, Section 221(d)(3) and 231 Non-Profit, Public Body, and Limited Dividend Borrowers remaining after any allowable Distributions. The use of these Residual Receipts is restricted under this Agreement.

aa. **"Security Instrument"** means the Multifamily/Health Care Mortgage, Deed of Trust Form HUD-94000, or other designation as appropriate by Property Jurisdiction, Assignment of Rents and Security Agreement, and any other security for the Indebtedness, and shall be deemed to be the mortgage as defined by the National Housing Act, as amended, implementing regulations and Directives.

bb. **"Surplus Cash"** means any cash plus amounts receivable on tenant subsidy payments (earned in the applicable fiscal period) remaining after:

(1) The payment of: (i) all sums immediately due or currently required to be paid under the terms of the Note, the Security Instrument and this Agreement due on the first day of the month following the end of the fiscal period; including without limitation, all amounts required to be deposited in the Reserve for Replacement or other reserves as may be required by HUD; and (ii) all other obligations of the Project (accounts payable and

accrued, unescrowed expenses) unless funds for payment are set aside or deferment of payment has been approved by HUD, and

(2) The segregation and recording of: (i) an amount equal to the aggregate of all special funds required to be maintained by the Borrower; (ii) the greater of the Borrower's total liability or the amount held by the Borrower for tenant security deposits; and (iii) all accounts and accrued items payable within thirty (30) days after the end of the fiscal period.

cc. **"State"** includes the several States and Puerto Rico, the District of Columbia, Guam, the Trust Territory of the Pacific Islands, American Samoa, and the Virgin Islands.

dd. **"Taxes"** means all taxes, assessments, vault rentals and other charges, if any, general, special or otherwise, including all assessments for schools, public betterments and general or local improvements, which are levied, assessed or imposed by any public authority or quasi-public authority, and which, if not paid, could become a lien on the Land or the Improvements.

## II. CONSTRUCTION

2. **CONSTRUCTION FUNDS.** The Borrower shall keep construction funds of the Mortgaged Property separate and apart from operating funds of the Mortgaged Property.

3. **UNPAID OBLIGATIONS.** Upon final endorsement of the Note, Borrower shall have no unpaid obligations in connection with the purchase of the Mortgaged Property, the construction of the Mortgaged Property, or with respect to the Security Instrument insured by HUD except such unpaid obligations, as have the written approval of HUD as to terms, form and amount.

4. **MORTGAGEE'S CERTIFICATE.** The Borrower shall be bound by the terms of the Mortgagee's Certificate insofar as it establishes or reflects obligations of the Borrower and the Borrower agrees that the fees and expenses enumerated in that Certificate have been fully paid or payment has been provided for in the Certificate and that all funds deposited with the Lender will be used for the purposes set forth in the Certificate.

5. **CONSTRUCTION COMMENCEMENT.** The Borrower shall not commence, and has not commenced, construction of the Mortgaged Property prior to HUD endorsement of the Note, except that this Section 5 is not applicable if HUD has given prior written approval to an early start of construction, or if this Project is an Insurance Upon Completion or a refinance.

6. **DRAWINGS AND SPECIFICATIONS.** The Mortgaged Property shall be constructed in accordance with the terms of the Construction Contract, if any, and with the "Drawings and Specifications."



**7. REQUIRED PERMITS.** The Borrower shall obtain all necessary building and other permits and the Mortgaged Property shall not be occupied by any tenant without the prior written approval of HUD and from all other legal authorities having jurisdiction of the Mortgaged Property.

**8. OUTSTANDING OBLIGATIONS.** The Borrower shall have no obligations as of the date of this Agreement except those approved by HUD and, except for those approved obligations, the Land has been paid for in full and is free from any liens or purchase money obligations.

**9. ACCOUNTING REQUIREMENTS.** The Borrower shall submit an accounting to HUD for all receipts and disbursements during the period starting with the date of first occupancy of the Mortgaged Property and ending, at the option of the Borrower, either on (a) the last day of the month in which the Mortgaged Property is determined by HUD to be acceptably completed; or (b) sixty days from the date the Mortgaged Property is determined by HUD to be acceptably completed. The excess of project income over property disbursements, as determined by HUD, shall be treated as a recovery of construction cost.

### **III. FINANCIAL MANAGEMENT**

**10. PAYMENTS.** The Borrower shall make promptly all payments due under the Note and Security Instrument.

**11. RESERVE FOR REPLACEMENT FUND.** The Borrower shall establish and maintain a Reserve for Replacement account for defraying certain costs for replacing major structural elements and mechanical equipment of the Project or for any other purpose.

a. The Reserve for Replacement shall be held by the Lender or by a safe and responsible depository designated by the Lender pursuant to the requirements of the contract for mortgage insurance. Such funds shall at all times remain under the control of the Lender, whether in the form of a cash deposit or invested in obligations of, or fully guaranteed as to principal by, the United States of America or in such other investments as may be allowed by HUD.

b. The Borrower shall deposit at endorsement of the Note an initial amount of \$\_\_\_\_\_, if applicable, and the Borrower shall deposit a monthly amount of \$\_\_\_\_\_, concurrently with the beginning of payments towards amortization of the Note unless a different date or amount is established by HUD. At least every ten years, starting from the date of endorsement, and more frequently at HUD's discretion, the Borrower shall submit a written analysis of its use of the Reserve for Replacement during the prior ten years and the projected use of the Reserve for Replacement funds during the coming ten years to HUD. The amount of the monthly deposit may be increased or decreased from time to time at the written direction of HUD without a recorded amendment to this Agreement.

c. The Borrower shall carry the balance in this fund on the financial records as a restricted asset. The Reserve for Replacement shall be invested in interest bearing accounts or investments, and any interest earned on the investment shall be deposited in the Reserve for Replacement for use by the Project in accordance with this Section 11.

d. Disbursements from such fund shall only be made after consent, in writing, of HUD. In the event of a Declaration of Default under the terms of the Security Instrument, pursuant to which the Indebtedness has been accelerated, a written notification by HUD to the Borrower of a violation of this Agreement or at such other times as determined solely by HUD, HUD may direct the application of the balance in such fund to the amount due on the Indebtedness as accelerated or for such other purposes as may be determined solely by HUD.

e. Where the Project is already subject to a Security Instrument insured or held by HUD as of the date hereof and this Agreement is now being executed by the Borrower as of the date hereof, the Reserve for Replacement now to be established shall be equal to the amount due to be in such fund under existing Agreements or charter provisions, and payments hereunder shall begin with the first payment due on the Security Instrument after acquisition, unless some other method of establishing and maintaining the fund is approved in writing by HUD.

**12. RESIDUAL RECEIPTS.** Section 221(d)(3) and 231 Non-Profit, Public Body, and Limited Dividend Borrowers shall establish and maintain, in addition to the Reserve for Replacement, a Residual Receipts Fund by depositing thereto, with the Lender, the Residual Receipts, as defined herein, within ninety (90) days after the end of the semiannual or annual fiscal period within which such receipts are realized. Such fund shall be held by the Lender or by a safe and responsible depository designated by the Lender in an interest bearing account. The Residual Receipts shall be under the control of HUD, and shall be disbursed only on the direction of HUD, who shall have the power and authority to direct that the Residual Receipts, or any part thereof, be used for such purpose as it may determine.

**13. PROJECT PROPERTY AND OPERATION; ENCUMBRANCES.** (a) The Borrower shall deposit all Rents and other receipts of the Project and all Rents and other receipts of the Project in connection with the financing of the Project, including equity or capital contributions, in the name of the Project in a federally insured depository or depositories and in accordance with Directives. Such funds shall be withdrawn only in accordance with the provisions of this Agreement for reasonable and necessary expenses of the Project or for distribution of Surplus Cash or as reimbursement of advances as permitted by Sections 15 and 16 below. Any person or entity receiving Mortgaged Property other than for payment of reasonable and necessary expenses or repairs or authorized Distributions of Surplus Cash shall immediately deliver such Mortgaged Property to the Project and failing so to do shall hold such Mortgaged Property in trust. (b) The Borrower, except for natural person Borrowers, shall not engage in any business or

activity, including the operation of any other Project, or incur any liability or obligation not in connection with the Project, nor acquire an Affiliate. (c) The Borrower shall satisfy or obtain a release of any mechanic's lien, attachment, judgment lien, or any other lien which attaches to any real or personal property of the Project or is used in its operation.

**14. SECURITY DEPOSITS.** Any funds collected as security deposits shall be kept (a) separate and apart from all other funds of the Project; (b) in interest bearing trust accounts, to the extent required by State or local law, and (c) the amount of which shall at all times equal or exceed the aggregate of all outstanding obligations under said account. Security deposit account interest shall be paid on a pro rata basis to tenants or applied to sums due under their leases upon the termination of their tenancy in the Project. The use of tenant security deposits for Project operations is prohibited unless the tenant has forfeited the deposit. The Borrower acknowledges that the unauthorized use of tenant security deposits for Project operations may constitute an improper taking or theft, and such acts may be prosecutable under criminal statutes.

**15. DISTRIBUTIONS.** The Borrower shall not make, or receive and retain, nor allow any Affiliate to receive or retain any Distribution of assets or any income of any kind of the Project, except from Surplus Cash. Distributions are governed by the following conditions:

- a. No Distribution shall be made from borrowed funds. Distributions shall not be taken prior to the completion of the Project. Distributions shall not be taken after HUD has given notice to the Borrower of a violation under this Agreement or a default has been declared under the Note or Security Instrument. Distributions shall not be taken when a Project is under a forbearance agreement.
- b. No Distribution shall be made when either (i) necessary services (utilities, trash removal, security, lawn service or any other services which the Borrower is required to provide) have not been provided, which failure the Borrower should have known about in the exercise of due care; (ii) notices of physical repairs or deficiencies (including but not limited to building code violations) by other Federal, State or local governing bodies and/or by HUD have been issued and remain unresolved to the satisfaction of the issuing public body or (iii) the Borrower has been notified by HUD, the Lender or other Federal, State or local governing body that physical repairs and/or deficiencies exist and the Borrower has not corrected or cured the identified items to HUD's satisfaction. HUD may permit Distributions when there are minor or contested local code violations on a case-by-case basis.
- c. Any Distribution of any funds of the Project, which the party receiving such funds is not entitled to retain hereunder, shall be returned to the Project account immediately.
- d. All allowable Distributions shall be made only after the end of a semiannual or annual fiscal period, and only as permitted by the law of the applicable jurisdiction. All such

Distributions to Section 220 (if so regulated), Section 221(d)(3) and 231 Limited Distribution Borrowers in any one fiscal year shall be limited to 6 percent on the initial equity investment, as determined by HUD, or to such other amounts as may be specified in Directives and the right to such Distributions shall be cumulative. No Distributions may be taken in the case of Section 220 (if so regulated), Section 221(d)(3) and 231 Public Body or Nonprofit Borrowers unless permitted by regulation or Directives. Distributions must be taken out of all Project accounts by all other Borrowers within the accounting period immediately following the computation of Surplus Cash and, if not taken within the identified period, these funds may only be used for reasonable and necessary Project operating expenses and repairs. The computation of Surplus Cash must be prepared at the end of the semiannual or annual fiscal period.

e. Equity or capital contributions shall not be reimbursed from project accounts without the prior written approval of HUD.

**16. REIMBURSEMENT OF ADVANCES.** Any advances made by the Borrower, on behalf of the Borrower, or for the Borrower must be deposited into the Project account. The Borrower or any entity which advances funds on behalf of the Borrower or for the Borrower for reasonable and necessary operating expenses or repairs may be reimbursed from Surplus Cash at the end of the annual or semiannual period. Such repayment is not considered a Distribution. Monthly reimbursement of the Borrower or any entity that advances funds on behalf of the Borrower or for the Borrower may be allowed with prior written approval by HUD.

**17. IDENTITY OF INTEREST.** If the Project's application for mortgage loan insurance was processed pursuant to HUD's Multifamily Accelerated Processing ("**MAP**") procedures, the Borrower's Principals shall not have an identity of interest, as defined by HUD in MAP Directives, between the Borrower and the Lender.

**18. FINANCIAL ACCOUNTING.** The Borrower shall keep the books and accounts of the operation of the Mortgaged Property in accordance with the requirements of Generally Accepted Accounting Principles (GAAP) and of HUD. The books and accounts must be complete, accurate and current at all times. Posting must be made at least monthly to the ledger accounts, and year-end adjusting entries must be posted promptly in accordance with sound accounting principles. Any undocumented Distribution or expense shall be an ineligible project expense, unless otherwise determined by HUD. Books, accounts and records shall be open and available for inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location.

**19. BOOKS OF MANAGEMENT AGENTS.** The books and records of management agents and Affiliates, as they pertain to the operations of the Project, shall be maintained in accordance with GAAP and shall be open and available to inspection by HUD, after reasonable prior notice, during normal office hours, at the Project or other mutually agreeable location. Every contract executed on behalf of the Project with any

management agent or Affiliate shall include the provision that the books and records of such entities shall be properly maintained and open to inspection during normal business hours by HUD at the Project or other mutually agreeable location.

**20. ANNUAL FINANCIAL AUDIT.** Within ninety (90) days, or such longer or shorter period established in writing by HUD, following the end of each fiscal year, the Borrower shall furnish HUD and the Lender with a complete annual financial report based upon an examination of the books and records of the Borrower prepared in accordance with GAAP, audited in accordance with Generally Accepted Auditing Standards (GAAS) and Government Auditing Standards (GAS) and any additional requirements of HUD unless the report is waived in writing by HUD. If the Borrower fails to submit the annual financial report within ninety (90) days of said due date, HUD may thereafter hire a Certified Public Accountant to prepare the report at the expense of the Borrower. The report shall include a certification in content and form prescribed by HUD and certified by the Borrower. The report shall be prepared and certified by a Certified Public Accountant who is licensed or certified by a regulatory authority of a State or other political subdivision of the United States, which authority makes the Certified Public Accountant subject to regulations, disciplinary measures, or codes of ethics prescribed by law. The Certified Public Accountant must have no business relationship with the Borrower except for the performance of the audit and tax preparation unless HUD expressly authorizes other relationships. Auditing costs and tax preparation costs may be charged as an authorized expense to the Mortgaged Property only to the extent they are required of the Borrower itself by State law, the Internal Revenue Service (IRS), the Securities and Exchange Commission, or HUD. Neither IRS audit costs nor costs of tax preparation for the Borrower's partners, members, shareholders, or other persons receiving Distributions from the Borrower may be charged to the Mortgaged Property as a Project expense. Non-profit Borrowers are to follow audit requirements specified in OMB Circular A-133, as revised.

#### **IV. PROJECT MANAGEMENT**

**21. PRESERVATION, MANAGEMENT AND MAINTENANCE OF THE MORTGAGED PROPERTY.** The Borrower (a) shall not commit Waste under the Security Instrument nor permit impairment or deterioration of the Mortgaged Property, (b) shall not abandon the Mortgaged Property, (c) shall restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition, or such other condition as HUD may approve in writing, whether or not litigation or insurance proceeds or condemnation awards are available to cover any costs of such restoration or repair, and (d) shall keep the Mortgaged Property in decent, safe, sanitary condition and good repair, including the replacement of Personality and Fixtures with items of equal or better function and quality. Obligations (a) through (d) of this Section 21 are absolute and unconditional and are not limited by any conditions precedent and are not contingent on the availability of financial assistance from HUD or on HUD's performance of any administrative or contractual obligations. The Mortgaged Property, equipment, buildings, plans, offices, apparatus, devices, books, contracts,

records, documents, and other papers and instruments must also be maintained in reasonable condition for proper audit and subject to examination by HUD at the Project or other mutually agreeable location. In the event all or any of the buildings covered by the Security Instrument shall be destroyed or damaged by fire, by an exercise of the power of eminent domain, by failure of warranty, or other casualty, the money derived from any settlement, judgment, or insurance on the Mortgaged Property shall be applied in accordance with the terms of the Security Instrument or as otherwise may be directed in writing by HUD.

**22. FLOOD HAZARDS.** If the Improvements are located in a special flood hazard area, the Borrower shall maintain flood insurance covering the Improvements in an amount at least equal to its development or project cost (less estimated land cost) or to the maximum limit of coverage made available with respect to the particular type of property under the National Flood Insurance Act of 1968, as amended, or its successor legislation, whichever is less, provided that the amount of flood insurance need not exceed the outstanding principal balance of the Note, and flood insurance need not be maintained beyond the term of the Note.

**23. MANAGEMENT AGREEMENT.** The Borrower shall execute a management agreement or other document outlining procedures for operating the Mortgaged Property. Such agreement or document must be acceptable to HUD. The Borrower and the management agent shall submit and maintain a current Management Certification meeting standards established by HUD.

**24. ACCEPTABILITY OF MANAGEMENT OF THE MORTGAGED PROPERTY.** The Borrower shall provide management of the Mortgaged Property in a manner deemed to be acceptable by HUD. At HUD's discretion, HUD may require replacement of the management or require the Borrower to conform the Project to HUD's overall management policies.

**25. TERMINATION OF CONTRACTS.** Any management contract entered into by the Borrower or any other third-party vendor contract pertaining to the Mortgaged Property shall contain a provision that the contract shall be subject to termination without penalty and without cause upon written request by HUD and shall contain a provision which gives no more than a thirty day notice of termination. Upon such request, the Borrower shall immediately arrange to terminate the contract, and the Borrower shall also make arrangements satisfactory to HUD for continuing acceptable management of the Mortgaged Property effective as of the termination date of the contract.

**26. CONTRACTS FOR GOODS AND SERVICES.** The Borrower shall obtain contracts for goods, materials, supplies, and services (hereinafter referred to as "goods and services") at the lowest possible cost (including contracts for laundry services where laundry services are provided), considering quality, durability, and scope of work, and on terms most advantageous to the Mortgaged Property. Such expenses may not exceed amounts customarily paid in the vicinity of the Land for the goods and services received.

Reasonable and necessary expenses do not include amounts paid for betterments or Improvements unless determined by HUD to be prudent and appropriate. When acquiring goods and services whose usual costs are expected to exceed the greater of \$10,000 or 5 percent of the gross annual revenue of the Mortgaged Property, the Borrower shall solicit written cost estimates to ensure that prices paid by the Borrower for goods and services, including the preparation of the annual audit, are competitive with prices paid in the area for goods and services of similar quality. All contracts, including but not limited to, contracts for goods and services purchased from individuals or companies affiliated with the Borrower or its management agent shall be at costs not in excess of those that would be incurred in making arms-length purchases on the open market. The Borrower shall keep copies of all written contracts or other instruments which affect the Mortgaged Property, all or any of which may be subject to inspection and examination by HUD at the Project or other mutually agreeable location.

**27. RESPONSIVENESS TO INQUIRIES.** At the request of HUD, the Borrower shall promptly furnish operating budgets and occupancy, accounting and other reports and give specific answers to questions upon which information is desired relative to income, assets, liabilities, contracts, operation, and conditions of the Mortgaged Property and the status of the Security Instrument.

**28. TENANT ORGANIZATIONS.** If the Project is subject to 24 CFR 245 Subpart B or any successor HUD regulation covering the rights of tenants to organize, the Borrower shall comply with this Section 28. The Borrower shall not (a) impede the reasonable efforts of resident tenant organizations to represent their members or the reasonable efforts of tenants to organize, or (b) unreasonably withhold the use of any community room or other available space appropriate for meetings which is part of the Mortgaged Property when requested by: (i) a resident tenant organization in connection with the representational purposes of the organization; or (ii) tenants seeking to organize or to consider collectively any matter pertaining to their living environment, which includes the terms and conditions of their tenancy as well as activities related to housing and community development. The Borrower may charge for the use of the Mortgaged Property any fees or costs approved by HUD as may normally be imposed for the use of such facilities or may waive any such fees or costs.

The intention of the signatories to this Agreement is that the tenants are third party beneficiaries of this Section 28, but not to other provisions of this Agreement, which are strictly between HUD and the Borrower, and do not create such third party rights. Further, the signatories intend that an aggrieved tenant may commence a civil action against the Borrower in a court of appropriate jurisdiction to enforce the provisions of this Section 28 or to obtain remedy for its breach, but that such third party beneficiary status is not intended to permit, nor shall it permit a suit against HUD under Section 28. The Borrower agrees that if sued by the tenants under this Section, it shall not have any right to join HUD, nor shall it seek to join HUD, to such suit.

**29. COMPLIANCE WITH LAWS.**

a. The Borrower shall comply with all applicable: laws; ordinances; regulations; requirements of any governmental authority; lawful covenants and agreements (including the Security Instrument) recorded against the Mortgaged Property; the National Housing Act; regulations and Directives of HUD; including but not limited to those of the foregoing pertaining to: health and safety; construction of improvements on the Mortgaged Property; fair housing; civil rights; zoning and land use; leases; lead-based paint maintenance requirements of 24 CFR Part 35 and maintenance and disposition of tenant security deposits; and, with respect to all of the foregoing, all subsequent amendments, revisions, promulgations or enactments. The Borrower shall at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 29. The Borrower shall take appropriate measures to prevent, and shall not engage in or knowingly permit, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Mortgaged Property, or otherwise impair the lien created by the Security Instrument or the Lender's interest in the Mortgaged Property. The Borrower represents and warrants to HUD that no portion of the Mortgaged Property has been or will be purchased with the proceeds of any illegal activity.

b. HUD shall be entitled to invoke any remedies available by law to redress any breach or to compel compliance by the Borrower with these requirements, including any remedies available hereunder.

## **V. ADMISSIONS AND OCCUPANCY**

**30. DWELLING ACCOMODATIONS AND SERVICES.** If the Project is subject to regulation of rent by HUD, the Borrower shall make dwelling accommodations and services of the Project available to eligible tenants at charges not exceeding those established in accordance with a rental schedule approved in writing by HUD.

**31. LEASE TERM.** Residential accommodations shall not be rented for a period of less than thirty (30) days or for more than 3 years and shall not be used for transient or hotel purposes. Rental for transient or hotel purposes shall mean: (a) Rental for a period of less than 30 days or (b) any rental, if the occupants of the housing accommodations are provided customary hotel services such as room service for food and beverages, maid service, furnishings or laundering of linens, and bellboy service. Residential units in projects with Security Instruments initially endorsed for insurance pursuant to Section 231 of the National Housing Act may be rented for a period of more than 3 years.

**32. COMMERCIAL (NON-RESIDENTIAL) LEASES.** No portion of the Mortgaged Property shall be leased for any commercial purpose or use without receiving HUD's prior written approval as to terms, form and amount.

**33. SUBLEASES.** All leases of residential units by the Borrower to tenants must prohibit tenants from entering into any subleases which do not run for at least thirty (30) days



and must require that all subleases be approved in advance in writing by the Borrower. All leases of residential units by the Borrower to tenants must also prohibit assignment of the leasehold interest by the tenant without the prior written approval of the Borrower. Leases of residential units must prohibit the tenant from granting the right to occupy the premises for a period of less than thirty (30) days or from furnishing hotel services. Assignment and subleasing of units by other than the tenant thereof without the prior written approval of the Borrower shall be prohibited in the lease. Upon discovery of any unapproved assignment, sublease or occupancy, the Borrower shall immediately demand cancellation and/or vacation of the premises, as appropriate, and notify HUD thereof.

**34. ELDERLY PROJECTS.** For Elderly projects or Elderly portions of projects, the Borrower shall restrict occupancy for elderly units to families where the head of household or spouse is 62 years or older. A single person 62 years of age or older shall constitute a family for the purposes of this Section 34.

**35. SECTION 231 PROJECTS.** If the Security Instrument is originally endorsed for insurance under Section 231 of the National Housing Act, the Borrower in selecting tenants shall comply with all applicable HUD regulations and Directives.

**36. FAMILIES WITH CHILDREN.** The Borrower shall not, in selecting tenants, discriminate against any person or persons by reason of the fact that there are children (individuals who have not attained 18 years of age) in the family. For Elderly projects or Elderly portions of projects, the Borrower shall not discriminate against otherwise eligible applicants for admission to the elderly unit by reason of the fact that there are children in the family.

**37. DISPLACED PERSONS OR FAMILIES.** If the Security Instrument is originally endorsed for insurance under Section 221 of the National Housing Act, the Borrower, in selecting tenants, shall give to Displaced Persons or Families who are eligible applicants an absolute preference or priority of occupancy at initial occupancy and, on a continuing basis, such preferred applicants shall be given preference over non-preferred applicants in their placement on a waiting list to be maintained by the Borrower and through such further provisions agreed to in writing by the Borrower and HUD.

**38. RENTS.** If the Project is subject to regulation of rent by HUD, HUD will at any time entertain a written request for a rent increase that is properly supported by substantiating evidence and HUD shall, within a reasonable time: (a) approve a rental schedule that is necessary to compensate for any net increase, occurring since the last approved rental schedule, in taxes (other than income taxes) and operating and maintenance costs over which the Borrower has no effective control; or (b) deny the increase and state the reasons for its decision.

**39. CHARGES FOR SERVICES AND FACILITIES.** If the Project is subject to regulation of rent by HUD, the Borrower shall only charge to and receive from any tenant such

amounts as have the prior written approval of HUD and are mutually agreed upon between the Borrower and the tenant for any facilities and/or services not included in the HUD approved rent schedule which may be furnished by, or on behalf of, the Borrower to such tenant upon request.

**40. PROHIBITION OF ADDITIONAL FEES.** The Borrower shall not charge any Project tenant or prospective Project tenant an admission fee, founders fee, continuing care retirement community fee, life-care fee or similar payment pursuant to any agreement to furnish Project accommodations or services to persons making such payments.

**41. SECURITY DEPOSITS.** The Borrower shall not require as a condition of occupancy or leasing of any unit in the Project, any consideration or deposit other than the prepayment of the first month's rent plus a security deposit in an amount not in excess of one month's rent to guarantee the performance of the lease terms.

## **VI. ACTIONS REQUIRING THE PRIOR WRITTEN APPROVAL OF HUD**

**42.** The Borrower shall not without the prior written approval of HUD:

a. Convey, assign, transfer, pledge, hypothecate, encumber, or otherwise dispose of any of the Mortgaged Property or any interest therein, or permit such conveyance, assignment, transfer, pledging, hypothecation, or encumbrance or disposition, or take any action which gives rights in another to establish or maintain a lien or encumbrance against the Mortgaged Property or any interest therein; provided, however, the Borrower may, and this provision shall not operate to require the Borrower to obtain prior written approval of HUD to, dispose of obsolete or deteriorated items of Fixtures or Personalty if the same are replaced with like items of same or greater quality or value and provided further, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of the Mortgaged Property at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) the Mortgaged Property becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest acquired by inheritance or by Court decree.

b. Enter into any contract, agreement or arrangement to borrow funds or finance any purchase or incur any liability, direct or contingent, other than for current, reasonable and necessary operating expenses and repairs.

c. Pay out any funds except from Surplus Cash, except for reasonable operating expenses and necessary repairs.

d. Pay any compensation, including wages or salaries, or incur any obligation to do so, to any officer, director, stockholder, trustee, beneficiary, partner, member, or Principal of the Borrower, or to any nominee thereof.

e. Enter into, change, or agree to the assignment of, any contract, agreement or

arrangement for supervisory or managerial services or leases for operation of the Project in whole or in part.

f. Convey, assign, or transfer, or permit the conveyance, assignment or transfer of any interest in the Borrower, if the effect of that conveyance, assignment, or transfer is the creation or elimination of a Principal; nor convey, assign or transfer any right to receive the Rents of the Mortgaged Property; provided, however, that this provision shall not operate to require the Borrower to obtain the prior written approval of HUD for (i) a conveyance of any interest in the Borrower at a judicial or non-judicial foreclosure sale under the Security Instrument, (ii) any interest in the Borrower becoming part of a bankruptcy estate by operation of law under the United States Bankruptcy Code and (iii) an interest in the Borrower acquired by inheritance or by Court decree

g. Remodel, add to, construct, reconstruct or demolish any part of the Mortgaged Property or subtract from any Land, Fixtures, Improvements or Personalty of the Mortgaged Property.

h. Permit the use of the Mortgaged Property for any other purpose except the use for which it was originally intended, or permit commercial use greater than that originally approved by HUD.

i. Receive any endowment which is not pledged as security for its obligations to HUD or the Lender unless the endowment by its terms is restricted to a specific purpose or purposes which do not permit such a pledge.

j. Amend, revise or cancel any provision or portion of the organizational documents of the Borrower, except for amendments or revisions simply to effect changes in interest in the Borrower which are not governed by Section 42f.

k. Institute litigation seeking the recovery of a sum in excess of \$25,000, nor settle or compromise any action for specific performance, damages, or other equitable relief, in excess of \$25,000, nor dispose of or distribute the proceeds thereof.

l. Reimburse any party for payment of expenses or costs of the Project or for any purpose.

m. Receive any fee or payment of any kind from any managing agent, employee of the Project or of the managing agent, or other provider of goods or services of the Project.

## **VII. ENFORCEMENT**

**43. VIOLATION OF AGREEMENT.** The occurrence of any one or more of the following shall constitute a Violation under this Agreement:

a. Any failure by the Borrower to comply with any of the provisions of this Agreement;

- b. Any fraud or material misrepresentation or material omission by the Borrower, any of its officers, directors, trustees, general partners, members, managers or managing agent in connection with (1) any financial statement, rent roll or other report or information provided to HUD during the term of this Agreement or (2) any request for HUD's consent to any proposed action, including a request for disbursement of funds from any restricted account for which HUD's prior written approval is required; and
- c. The commencement of a forfeiture action or proceeding, whether civil or criminal, which, in HUD's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair HUD's interest in the Mortgaged Property.

**44. DECLARATION OF DEFAULT.** At any time during the existence of a violation, HUD may give written notice of the violation to the Borrower, by registered or certified mail, addressed to the addresses stated in this Agreement, or such other addresses as may subsequently, upon appropriate written notice to HUD, be designated by the Borrower as its legal business address. If, after receiving written notice of a violation, that violation is not corrected to the satisfaction of HUD either within thirty (30) days after the date such notice is mailed, or within such shorter or longer time set forth in said notice, HUD may declare a default under this Agreement without further notice. Alternatively, in order to protect the health and safety of the tenants, HUD may declare a default at any time during the existence of a violation without providing prior written notice of the violation. Upon any declaration of default HUD may:

- a. If HUD holds the Note, declare the whole of said Indebtedness immediately due and payable and then proceed with the foreclosure of the Security Instrument;
- b. If said Note is not held by HUD, notify the holder of the Note of such default and require the holder to declare a default under the Note and Security Instrument, and the holder after receiving such notice and demand, shall declare the whole Indebtedness due and payable and thereupon proceed with foreclosure of the Security Instrument or assignment of the Note and Security Instrument to HUD as provided in HUD regulations and Directives. Upon assignment of the Note and Security Instrument to HUD, HUD may then proceed with the foreclosure of the Security Instrument;
- c. Collect all Rents and charges in connection with the operation of the Project and use such collections to pay the Borrower's obligations under this Agreement and under the Note and Security Instrument and the necessary expenses of preserving and operating the Mortgaged Property;
- d. Take possession of the Mortgaged Property, bring any action necessary to enforce any rights of the Borrower growing out of the Mortgaged Property's operation, and maintain the Mortgaged Property in decent, safe, sanitary condition and good repair;

e. Apply to any court, State or Federal, for specific performance of this Agreement, for an injunction against any violations of the Agreement, for the appointment of a receiver to take over and operate the Project in accordance with the terms of the Agreement, or for such other relief as may be appropriate, since the injury to HUD arising from a default under any of the terms of this Agreement would be irreparable and the amount of damage would be difficult to ascertain;

f. Collect reasonable attorney fees related to enforcing the Borrower's compliance with this Agreement, and

g. With respect to Violations related to felony criminal convictions or civil judgments concerning the operation or management of the Mortgaged Property, direct the Borrower to replace any general partner, limited liability company member or non-member manager, limited liability limited partnership member, officer or director of the Borrower corporation, trustee, beneficiary of a trust, joint venturer, joint tenant or tenant in common with a natural person or entity acceptable to HUD pursuant to HUD's Participation and Compliance regulations and Directives.

**45. MEASURE OF DAMAGES.** The damage to HUD as a result of the Borrower's breach of duties and obligations under this Agreement shall be, in the case of failure to maintain the Mortgaged Property as required by this Agreement, the cost of the repairs required to return the Project to decent, safe and sanitary condition and good repair. This contractual provision shall not abrogate or limit any other remedy or measure of damages available to HUD under any civil, criminal or common law.

**46. NONRECOURSE DEBT.** Except as provided in Section 8 of the Note and Section 6 of the Security Instrument, no person or entity is liable for payments due under the Note and Security Instrument, or for payments to the Reserve for Replacement or for matters not under their control, except, notwithstanding any provision of State law to the contrary, any person or entity is liable:

a. For funds or property of the Project coming into its possession which, by the provisions hereof, the person or entity is not entitled to retain;

b. For its own acts and deeds or acts and deeds of others which it has authorized in violation of the provisions hereof; and

c. As otherwise provided by law.

## **VIII. MISCELLANEOUS**

**47. BINDING EFFECT.** This instrument shall bind, and the benefits shall inure to, the respective Borrower, its heirs, legal representative, executors, administrators, successors in office or interest, and assigns, and to HUD and HUD's successors, so long as the contract of mortgage insurance continues in effect, and during such further

time as HUD shall be the Lender, holder, coinsurer, or reinsurer of the Security Instrument, or obligated to reinsure the Security Instrument, or protect the tenants of the Project.

**48. PARAMOUNT RIGHTS AND OBLIGATIONS.** The Borrower warrants that it has not, and will not, execute any other agreement with provisions contradictory of, or in opposition to, the provisions hereof, and that, in any event, the requirements of this Agreement are paramount and controlling as to the rights and obligations set forth and supersede any other requirements in conflict therewith.

**49. SEVERABILITY.** The invalidity of any clause, part, or provision of this Agreement shall not affect the validity or the remaining portions thereof.

**50. HEADINGS AND TITLES.** Any heading or title of a section, paragraph or part of this Agreement is intended for convenience only, and is not intended, and shall not be construed, to enlarge, restrict, limit or affect in any way the construction, meaning or application of the covenants or provisions thereunder or under any other heading or title.

**51. PRESENT ASSIGNMENT.** The Borrower irrevocably and unconditionally assigns, pledges, mortgages and transfers to HUD its rights to the Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts of whatsoever sort which it may receive or be entitled to receive from the operation of the Mortgaged Property, subject to the assignment of Rents in the Security Instrument. Until a default is declared under this Agreement, revocable license is granted to the Borrower to collect and retain such Rents, charges, fees, carrying charges, Project accounts, security deposits, and other revenues and receipts, but upon a Declaration of Default under this Agreement or under the Security Instrument, this revocable license is automatically terminated.

**52. NOTICES.** Any notice or other communication given or made pursuant to this Agreement to the Borrower, if applicable, shall be made to the following addresses:

**BORROWER:**

The Borrower may, at any time, by written notice to HUD, designate a different address to which such communications shall thereafter be directed. Said notice, and any other written notice to HUD pursuant to this Agreement, shall be delivered to the HUD field office which has jurisdiction over the Project.

**53. UNIFORM COMMERCIAL CODE SECURITY AGREEMENT.** This Regulatory Agreement is also a security agreement under the Uniform Commercial Code for any of the Mortgaged Property which, under applicable law, may be subject to a security

interest under the Uniform Commercial Code, whether acquired now or in the future, and all products and cash proceeds and non-cash proceeds thereof (collectively, "**UCC Collateral**"), and Borrower hereby grants to HUD a security interest in the UCC Collateral. Borrower shall execute and deliver to HUD (or the Lender acting on behalf of HUD), upon the request of HUD or the Lender, financing statements, continuation statements and amendments, in such form as HUD may require to perfect or continue the perfection of this security interest. Borrower shall pay all filing costs and all costs and expenses of any record searches for financing statements that HUD may require. Without the prior written consent of HUD, Borrower shall not create or permit to exist any other lien or security interest in any of the UCC Collateral except for the first lien and security interest in favor of the Lender. If an Event of Default has occurred and is continuing, HUD shall have the remedies of a secured party under the Uniform Commercial Code, in addition to all remedies provided by this Regulatory Agreement or existing under applicable law. In exercising any remedies, HUD may exercise its remedies against the UCC Collateral separately or together, and in any order, without in any way affecting the availability of HUD's other remedies. This Regulatory Agreement constitutes a financing statement with respect to any part of the Mortgaged Property which is or may become a Fixture.

## **IX. SECTION 8 HOUSING ASSISTANCE PAYMENTS CONTRACTS**

The following additional provisions are applicable to Projects for which the Borrower has entered into a Section 8 Housing Assistance Payments Contract:

**54. DEFINITIONS.** The following additional definitions are applicable to Projects for which the Borrower has entered into a Section 8 Housing Assistance Payments Contract:

a. "**Section 8 units**" refers to units assisted under Section 8 of the United States Housing Act of 1937, as amended, pursuant to a Housing Assistance Payments Contract. For purposes of this Agreement, Section 8 units include project-based Section 8 units, but does not include Section 8 certificates, vouchers or housing choice vouchers.

b. "**Housing Assistance Payments Contract**" refers to a written contract between the Borrower and HUD, or the Borrower and a Public Housing Agency, or the Borrower and a Housing Finance Agency for the purpose of providing project-based housing assistance payments to the Borrower on behalf of eligible families under Section 8 of the United States Housing Act of 1937.

**55. ADMISSION.** The criteria governing eligibility of tenants for admission to Section 8 units and the conditions of continued occupancy shall be in accordance with the Housing Assistance Payments Contract.

**56. RENTS.** The maximum rent for each Section 8 unit is stated in the Housing Assistance Payments Contract and adjustments in such rents shall be made in accordance with the terms of the Housing Assistance Payments Contract.

**57. CONTRACTUAL OBLIGATIONS.** Nothing contained herein shall be construed to relieve the Borrower of any obligations under the Housing Assistance Payments Contract.

**58. INCORPORATION BY REFERENCE.** The terms of the Housing Assistance Payments Contract are incorporated by reference into this Agreement. In the case of a conflict between this Agreement and the Housing Assistance Payments Contract, the Housing Assistance Payments Contract shall be controlling.

**59. VIOLATION OF HOUSING ASSISTANCE PAYMENTS CONTRACT.** A violation of the terms of the Housing Assistance Payments Contract may be construed to constitute a violation hereunder in the sole discretion of HUD.

**60. EXPIRATION AND TERMINATION OF THE HOUSING ASSISTANCE PAYMENTS CONTRACT.** In the event said Housing Assistance Payments Contract expires or terminates before the expiration or termination of this Agreement, the provisions of this Agreement that pertain to the Housing Assistance Payments Contract shall automatically terminate and shall no longer be effective as of the date of the expiration or termination of the Housing Assistance Payments Contract.

**IN WITNESS WHEREOF**, the parties hereto have set their hands and seals on the date first herein above written.

**BORROWER**

**U.S. DEPARTMENT OF HOUSING AND  
URBAN DEVELOPMENT**

(insert name)

BY: \_\_\_\_\_  
Authorized Agent  
Title

BY: \_\_\_\_\_  
Authorized Agent

\_\_\_\_\_  
Principal  
Title

\_\_\_\_\_



Principal  
Title

Each signatory below hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD (acting by and through the FHA Commissioner) in insuring a multifamily rental or health care facility mortgage loan, and may be relied upon by HUD and the Commissioner as a true statement of the facts contained therein.

Name of Entity: \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Dated: \_\_\_\_\_

By: \_\_\_\_\_ /s/ \_\_\_\_\_

Printed Name, Title: \_\_\_\_\_

Dated: \_\_\_\_\_

**[ADD ADDITIONAL LINES IF MORE THAN TWO SIGNATORIES]**

### **Warning**

Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010 and 1012; (ii) civil penalties and damages under 12 U.S.C. §§ 1715z-19, 1715z-4a and 1735f-15 and 31 U.S.C. § 3729; and (iii) administrative sanctions, claims, and penalties under 24 C.F.R. parts 24, 28 and 30.

**NOTICE: THIS DOCUMENT MUST HAVE A LEGAL DESCRIPTION ATTACHED AND BE EXECUTED WITH ALL FORMALITIES REQUIRED FOR RECORDING A DEED TO REAL ESTATE (*i.e.*, NOTARY/ACKNOWLEDGEMENT, SEAL, WITNESS OR OTHER APPROPRIATE FORMALITIES).**